



Muhammadiyah Law Review 1 (2), June 2017,  
ISSN 2549-113X (print), ISSN 2580-166X (online)  
Journal Homepage: <http://ojs.ummetro.ac.id/index.php/law>

## THE DEVELOPMENT OF LEGAL SYSTEM IN INDONESIA THAT BASED ON THE VALUE PANCASILA

**Aristo Evandy A.Barlian**

*International Development Law ASEAN, Faculty of Law Universiti Kebangsaan Malaysia,  
(Bangi 43600, Malaysia)*

### ABSTRACT

Indonesia is a plural or pluralistic society, which includes a variety of awareness both personal and group. In the development of the legal system in Indonesia, which became an important part of cultural and community awareness is very influential in the development. Indonesia is a culture and awareness of the law is no single or uniform, although in principle there are various similarities in the pluralistic society. Existing equation should be used to formulate a legal union, although many different cultures in Indonesia. Pancasila is the philosophical basis for the formation of the unitary state of Indonesia, therefore, for the realization of national unity in enacting a national law in Indonesia must be based on Pancasila and the 1945 Constitution as the supreme norm. The objective of this study will clarify that the law enacted at this time still does not reflect the values of Pancasila and impressed liberalism, as the law is currently drafted and enforced on the basis of normative thinking less backed up to a statement of the case and the plural society, namely empirical thinking. Methodology This study will explain the values of Pancasila and culture in the development of legislation that affects the development of the other, which can be reviewed comprehensively in this paper. Thus for the sake of the welfare of the nation and public awareness of the law, the results of this study will explain the need for the development of legal systems that systemic and continuously keeping with the character of the Indonesian nation, namely the development of legislation based on the Pancasila.

*Keywords: Development Act, the Public Awareness of Development, Value Pancasila.*

### 1. Introduction

Indonesia currently has the ideology of Pancasila, the Indonesian legal system still uses the Dutch culture that tends individual and contrary to the principles of Pancasila, which brings together all the differences that exist in Indonesia. Principles which tend to individualism makes many injustices occur and differences of opinion on the legal system in Indonesia, it nor even many cultural liberalism and capitalism others that the adoption of legislation in Indonesia, it is clearly undesirable for Indonesia's plural because not corresponds with the ambition to create unity and eliminate differences in accordance with

\*Corresponding author.

E-mail address: [aristoevandy26@yahoo.com](mailto:aristoevandy26@yahoo.com)

Peer reviewed under responsibility of Universitas Muhammadiyah Metro

© 2017 Universitas Muhammadiyah Metro, All right reserved,



Muhammadiyah Law Review: Jurnal Ilmu Hukum Universitas Muhammadiyah Metro This work is licensed under a Creative Commons Attribution 4.0 International License.

Pancasila.<sup>1</sup>

Indonesian law that is inconsistent with the principles of Pancasila will lead to conflict and injustice on the territory of Indonesia's plural. In creating multi-dimensional development system and the development of all the elements that exist in Indonesia, should start from the development of its legal system, when the development of the legal system in accordance with the ideals of the nation and the state philosophy, the development of other terms will be run in accordance with the ideals of the nation.

## 2. Materials and Methods

This study will use the methodology of normative study which will examine the system of legal development in Indonesia, The methodology of this study will explain the values of Pancasila and culture in the development of legislation that affects the development of the other, which can be studied comprehensively in the paper this work. The analysis of material obtained in this study using descriptive analysis. Materials obtained will be analyzed in depth to describe the object of study. This study showed the development of the legal system in Indonesia, the development of the legal system in Indonesia include the development and construction of the system that is in accordance with the principles of Pancasila.

## 3.Results

Development in the field of law is one of the areas of development is very important, it is because the law is viewed from its function not only works as a bodyguard social against various forms of deviant behavior that is not productive in the development process, but the law also have ability to make social change which is a function that can be played by the law in perform various changes or social engineering. In addition to these two functions, the development of the law is also aimed at the business of giving legal protection to the people in order to create a sense of peace, comfort, security and public order of society, where all three of these conditions is a prerequisite for involvement and public participation actively in the development process based on the values of human rights.

The third function of the law, in the context of the development course instructed how to make all aspects and components in the country aimed at accelerating the development of its own success. The development policy of the current law enforcement efforts are focused on the rule of law-based and uphold human rights in order to achieve prosperity, peace and order of society, with of course stick to the principle of democracy through various stages of development of the law.<sup>2</sup>

The development has two sides in changing things for the better; one hand serves to improve the quality of human life, while on the other hand can reduce the quality of human life. Provide development contribution significant changes positive or negative meaning. It is therefore necessary in order to determine its development pipeline design development, including the calculation of the risks and how to mitigate the risks of development. Development of the law, must be viewed holistically as a conscious effort, systematic, and

---

<sup>1</sup>Mansour Fakh, Critical Review of the Green Revolution, in Hatta Sunanto et.all, *Development and Democration* , Yogyakarta: Laperapustaka Utama, 2000, page. 4.

<sup>2</sup>Lili Rasjidi and IB Wyasa Putra, *Law as a system*, (Bandung: Mandar Maju, 2003) page.178.

continuing to build a society, nation, and state that the more developed, prosperous, secure, and peaceful in the frames and foundation law is fair.<sup>3</sup>

The development of law in Indonesia is closely related to the manufacturing process of the law or your statutory regulations for Indonesia to use the legal system of common law that is written law, the development of law in Indonesia should develop legal writing allowing normative values that live in the community for drafted in such a way and then enforced by the public authority to be the norm of public (law making process), then the process of implementation and enforcement (law enforcement) that allows the law to be fostered and developed into life and works very functional (living law in action), whether the process of construction and development of legal awareness of society that allows the law and the legal system built obtain social support in the broad sense (legal awareness). In other words, the development of laws that systemically addressing :<sup>4</sup>

1. The material laws and procedures,
2. Institutions, including officials involved in it, mechanism of legal institutions, as well as the supporting infrastructures necessary for it, and related,
3. Awareness of the law and legal culture of society which is the subject of the law is concerned.

The quality of the new law can be known after the law was implemented. Bad law will lead to bad consequences and laws that will produce a good effect. The law is a normative science (*das sollen*) and science reality (*das sein*) if the content of legal norms do not correspond to reality then there will not be called to justice. The rules of life in society that sometimes conflict with national law enacted by the government, so the justice community sometimes conflict with the rule of law is enacted government. In a report to the United Nations congress VI / 1980 law said the further switch of feelings and values of life in society, the greater the distrust of the legal system of the country. So the reform of the law should clearly see the values that live in the community such as customs, local wisdom and culture of the people who believed in Indonesia, because the law regardless of culture will be far from the ideals of the expected development.<sup>5</sup>

Many of his mafia, corruption and crime within the state proves that the legal system in the country is still not effective in ensnare various crimes, laws have always defended the strong oppress the weak, the law is only made for personal use and not for public use, destruction various elements of the country in terms of economy, education, health, social, cultural and others attributed to the weak development of the legal system. Hence the need for the development of the legal system appropriate, effective and sustainable as was characteristic of the nation, namely Indonesia Pancasila system.

## **(2). Pancasila as The Indonesian Development Philosophy.**

The legal system of Indonesia is the national legal system of Pancasila For all the law is in Indonesia should be based on Pancasila. As a basic Negara Indonesia Pancasila as well as the source of all sources of law in Indonesia. Pancasila means that the position is placed at the highest position in law (*Grundnorm*) in Indonesia, although since Indonesia's independence is still used by the Dutch law, Pancasila position in this case the guidelines and

---

<sup>3</sup>Jimly Asshiddiqie, *National Law Development Agenda Globalization Ages*, (Jakarta: PT Balai Pustaka, 1998) page.28.

<sup>4</sup>BPHN, *Thinking and National Legal System Framework and Long-Term Development Plan Law*, (Jakarta: BPHN, 1995/1996) page.19

<sup>5</sup>Sisth UN Congress om the Prevention of Crime and Treatment of Offenders (New York, Departement of International Economic and social Affairs, United Nations 1981). Page.45.

directions for each nation Indonesia in formulating and improving laws law in Indonesia. See that the law is constantly changing and keeping up with society, so any changes that occur will always be tailored to the aspirations of the Indonesian people who refer to the Pancasila.

In order to be fair and prosperous society that became the foundation of Indonesia's Pancasila, hence the need for the rule of law and order in the society and the state set to achieve that goal. Suitable conditions and mold the course all the rules that exist in Indonesia should be based also on Pancasila. But in fact the creation and practice of law in Indonesia is of course a lot of ups and downs caused that in the era of globalization at the present time many new problems that arise in the homeland, especially the issue of corruption, nepotism, and the inclusion of culture from outside affecting on cultural changes in society. These changes will have an impact on new life in society which of course brings new effects in terms of the law in Indonesia. The law in Indonesia also continues to change to fit in with the existing problems. In fact, Indonesia is still using a lot of Dutch inheritance law because Indonesia was a Dutch colony and legal use of this turkey difficult to coordinate with Indonesian culture "gotong royong".

Dutch Law has been used since Indonesia's independence so far that it becomes difficult to be customized to the culture of Indonesia in accordance with the values of Pancasila, whether the number of foreign cultures that go in Indonesia has eroded the culture, systems, customs and values of law Law in Indonesia or not in line with the objectives of the Pancasila. Development of law in Indonesia will be better if the law heritage turkeys tend to be liberal and individualistic which can be converted into law in accordance with the culture and values of the society that is enshrined in the Pancasila. Pancasila as the foundation of law in Indonesia can be protective in the face of new problems that arise both from western culture and the problems of adaptation of new laws from abroad. Pancasila as the foundation of law in Indonesia can be protective in the face of new problems that arise both from western culture and the problems of adaptation of new laws from abroad. Therefore Pancasila should remain the foundation of the Indonesian nation in the face of new problems and the problems of the law.

Pancasila has the basic values that illustrate the people of Indonesia in the conduct of national life. The values contained in Pancasila is very influential on people's lives and integrity of the nation, values such as:

1. Belief in the almighty God, means every nation Indonesia has and given the presence of God in their lives. The act must be based on religion.
2. Humanitarian civilized, means every nation Indonesia upholds humanity and not discriminate against any race or group.
3. Unity of Indonesia, means every nation upholds the principle of unity in spite of many differences but importance country must come first.
4. Democracy guided by wisdom and discretion in consultation and representation, means the nation of Indonesia recognizes leadership democratically elected by the people in the national interest.
5. Social justice for all Indonesian people, means the people of Indonesia to provide fair treatment for all citizens without distinction of any background people of Indonesia.

These five principles that underlie the development of law in the country of Indonesia. These precepts can be summed up into three principles of Pancasila, namely the divine, the human and social values. In the divine that the law is there to be drafted by the justice of the Supreme Lord, in the humanity that the law is enacted must uphold human rights in accordance with the souls of humanity, and the community recognize that in legislative

drafting and its implementation must see community values that exist in every culture in Indonesia. Therefore the development or reform of the law in Indonesia can not be separated from the values contained in Pancasila as the law does not have the 3 value is not the national law of Indonesia.

In addition Pancasila, Indonesia also holds Trisakti principles of their ancestors in the development of the nation. Trisakti principle is used in carrying out the development and reform of the law relating to economic, social, cultural as well as new items are present in Indonesia. Trisakti has values such as :

1. Sovereign in politics, means that Indonesia should have a role in the international world.
2. Economic independently, means Indonesia can design and develop a pattern of economic cooperation with the countries of the industry with confidence and mutual benefit.
3. Personality and culture, means the Indonesian nation must have a good attitude and moral development and has personally honored.

The principle of Trisakti Indonesia is expected to compete with developed countries and developing countries from all fields. Trisakti this concept remains to be done if the public awareness and the quality is still bad legislation with liberalism and capitalism as inconsistent with the purposes of God in Pancasila, the result will appear as corrupt mafia, drug dealers and terrorists who would harm the country's development. Pancasila as the development of legal thought is necessarily a good reference from all areas of political, economic, social, and culture in Indonesia.

Pancasila in political development should enhance human dignity by placing the supreme power is of the people, by the people and for the people in the Indonesian political system in accordance with Pancasila as the thought is a democratic political system. Thus, need to be developed based on the concept of citizenship in the precepts of Pancasila IV, either on moral foundations of the principles of Pancasila. Then, in succession, the Indonesian political system developed on the moral divinity, humanity, unity, democracy and justice. Moral is a cornerstone of citizens and maintenance of a decent political order and moral behavior for policy development in Indonesia.

Pancasila as the thought of economic development with the economic system of moral values of Pancasila. In particular, the economic system shall be based on the principles of God's moral and humanitarian Please I Pancasila Pancasila on Sila II that produces humane economic system. Economic system that respects human nature, both as individual beings, social, personal as well as mortal beings gods. Economic system based on Pancasila different with liberalism and capitalism economic system that only benefits individuals without attention to the other man. The economic system in contrast to the economic system in the capitalist system and liberal who does not think about the welfare of other people. Pancasila departed from the human as a whole and man as the subject. Therefore, the economic system should be with the system and economic development with the goal of overall well-being of the family based on human values. Economic development must refrain from forms of free competition, monopoly will lead to oppression, injustice, suffering, and misery citizens.

Pancasila as the thought of economic development refers Please IV Pancasila, while the economic development of Indonesia's economic system, namely the Economic Development Democracy or Democratic Development Economics or Economic System Pancasila which the economy for the greater prosperity of the people with justice for the citizens of Indonesia where political economy provides opportunities , support, and community economic development, including cooperatives, small businesses, and

medium-sized enterprises as a key pillar of economic development. Therefore, the economy is organized as a joint effort based on the principle of family that is able to develop concrete programs of local government in the era of regional autonomy that is more independent and better able to create a fair and equitable regional development. Thus, the economy will be able to empower local people / citizens in economically, making it more just, democratic, transparency, and participation. In the economy, the role of protecting the public by enacting legislation that the valued of Pancasila.

Pancasila as the thought of social and cultural development of humanity because it is based on the fact Pancasila and its own human nature. It is the moral Humanity of Man must be able to develop itself from the homo become human. According to please the unity of Indonesia, social and cultural development is developed on the basis of respect for social values and cultures vary across the archipelago towards the achievement of a sense of unity as a nation. There needs to be recognition of and respect for cultural and social life of various groups of the Indonesian people so that they feel valued and accepted as citizens. Thus, social and cultural development does not create a gap, envy, discrimination, and social injustice.

New thinking in national development in Indonesia are thinking of sustainable development, which is in the planning and implementation should be held with respect for the rights of the communities involved in the state's right to regulate national life and individual human rights sustainable development, which is in the planning and implementation should be maintained respect the rights of cultural communities involved, as well as the right of states to regulate the rights of national and individual balanced (section 2 Pancasila).

Cultural rights community can be as an intermediary / mediator / arbitrator between the state and individual rights. Such thinking can overcome the centralized planning system and society that ignores the plurality and diversity of Indonesian culture. Thus, the era of regional autonomy will not lead to autonomous tribes, but it will combine the development of local / regional to regional development and national development (section 4 Pancasila), so that it will ensure the balance and fairness (section 5 Pancasila) in order to strengthen national unity to be able to uphold the sovereignty and territorial integrity of the Republic of Indonesia (section 3 Pancasila). It can be said that every value that is in the Pancasila relate to each other hand and the ideology of development policy across the multidimensional system in Indonesia.

#### **4. RESEARCH FINDINGS**

##### **(1).Development of Indonesian Law that Systemic and Continuously.**

In the development of legal basis of the government is a government of Indonesia to protect society (social defense) and the public welfare (social welfare) which is an effort of national goals. Achieving national goals (social welfare and social defense), via conduction state sovereignty of the people and democracy based on Pancasila and the Constitution of 1945. The implementation of the state implemented through national development in all aspects of national life.<sup>6</sup> In the end, the national development effort is to achieve quality of life for a just and prosperous society. Achieving quality of life for a just and prosperous society undertaken by the Indonesian government through national sustainable development / sustainability (sustainable development) including the development of national legislation by the Indonesian government that is programmed in the Long Term Development Plan in Indonesia.

---

<sup>6</sup>Taken from GBHN, *Ketetapan MPR RI Nomor IV/MPR/1999*, Tahun 1999-2004, basic considerations, hal. 8-9.

Development of national legislation in Indonesia is part of the national development system aimed at creating a national goal to protect all the people and the nation, and the entire homeland of Indonesia, promote the general welfare, educating the nation and participate in world order based on freedom, lasting peace, and social justice through the legal system of the country. Program development of the law should be a priority because of changes to the Constitution of the Republic of Indonesia Year 1945 has broad implications The constitutional and fundamental in the system that need to be followed by changes in legislation / regulation of the legal system.<sup>7</sup>

There is a systemic relationship between national development with the development of national legal systems in the achievement of national goals, namely the welfare and protection of the global community and to participate in the establishment of world order. Track achievements can not be separated-miss with the ideals of the Declaration of Independence and the Constitution of 1945. The development of the national legal system which aims at realizing the cause of social welfare and protection of the public, given meaning by the Government as the legal system that adheres to the principle that fixed nasionality concept recognize diversity or diversity of laws such as customary law, Islamic law, the law of another religion, law and contemporary western law, as well as formulating various nodes into a single functional between the various rules are available through consolidation to certain laws that do, either partially, or in the form of codification.<sup>8</sup> Thus the development of the national legal system should pay attention to the values of the habit of living in society.

Law in Indonesia is playing an important role in the development process. Regional differences make each area only accentuate their system and do not realize the importance of sustainable development of the unity of the Pancasila ideology which is very important for the country. At the moment the law Indonesia has yet to show the development of the law in line with expectations and a sense of justice, because the law at the moment still do not really favor the interests of the people, many laws are made only to protect the interests individual and group, and the law does not implement the values that live in a society like the Pancasila, because Pancasila is the philosophical reasons that exist in Indonesian society.<sup>9</sup>

Efforts to implement the values of life in society, is the duty of every public awareness in order to realize the country's laws in a fair and democratic development of the legal system of the country to establish legislation that aspirational, on justice and truth serve interests of the people and the nation in the frame of the Unitary Republic of Indonesia. Development for Systemic law is development that is done thoroughly and reviewed continuously following the changing times. In business development and legal reform, the replacement of the legislation should be done for legal reasons colonial legacy is not in accordance with the development of society either does not contain certainty, justice, truth, and do not pay attention to the values of the habit of living in public in accordance with Pancasila.<sup>10</sup>

Reform of the legal system is a joint development of the legal system that is no longer compatible with the nation state. The law is part / sub-system of the legal system consisting of "legal substance", "legal structure" and "legal culture". Thus if applicable to the renewal and development of the legal system must be built through reform "the substance of the law" reform "legal structure" and renewal "legal culture". Development of the reform law (Legal substance) consists of all the rules of law in Indonesia. Reform of the system is done to adjust the biological values of life in society and the values of Pancasila in Indonesian law is still

---

<sup>7</sup>Indonesian National Legislation Program Of 2004-2009 .

<sup>8</sup>*Ibid.*

<sup>9</sup>Indonesian National Legislation Program of 2004-2009 ., *Ibid*

<sup>10</sup>Indonesian National Legislation Program of 2004-2009 ., *Ibid*

not perfect and still thought liberal. Development and reform of the legal structure (Legal structure) including legal reforms related to the institutional, administrative, and management of institutions of law enforcement (investigation, prosecution, courts, implementing crime), including coordination between law enforcement The national, regional, and international.

Cultural development and reform of the cultur law in Indonesia has an important role and is very important in law enforcement in Indonesia because the law is very much determined by the legal culture in the form of values, views and attitudes of the people concerned. If the culture of law is ignored, there will be failure of the modern legal system and cause a variety of new crimes. In the framework of the enforcement of criminal law in Indonesia is needed to increase the quality of the role of legal culture through cultural and behavioral professionals the positions of law enforcement, education and the construction of individual behavior and social area not only to the post of law enforcement Law but all elements of society and government.

The development of law in Indonesia is not only reform of laws and reform the structure of the law, but enforcement of the law should be enforced by legal culture is explored, made of the values contained in Pancasila awareness and ideals of law (rechtidee), moral ideals, freedom of the individual and the nation, humanity, peace, political ideals and the destination country and reflects the value of life in society and the values contained in Pancasila.

With the role of the legal culture that is rooted from ancestral values cherished and appreciated by the people of Indonesia, then the law is enforced as a means of safeguarding the interests of society and the means of effective community supervision of all aspects. In the end, the active participation of society in the process of law enforcement is the key of success of development in the field of law and development in other fields, whether the active participation of the community can be achieved if people realize exactly know their rights and obligations in the existing law.

#### **4. Conclusions**

The legal system of heritage turkeys and foreign legal systems is not in line with the many people in Indonesia, when the Pancasila is not done properly, it will hinder the development of all areas in Indonesia. Very difficult to insert the idea of development in the legal system of development goals Indonesian law therefore there must be reform of the law in accordance with the customs of the people of Indonesia Development of Indonesian law is the priority of development in all its aspects in Indonesia because it must be done in a systematic, comprehensive, and sustainable in terms of material, structure, and culture according to the concept of Pancasila values in order to realize the objectives of the development of the Indonesian nation that continues to improve.



## **Bibliography**

### **Books :**

Anthony Giddens, 2002. "*Global governance*". Jakarta: Gramedia Pustaka Utama.

BPHN 2012, Mindset and National Legal System Framework And Long-Term Development Plan Law..

Fried Weiss et al. eds., 1998. *International Economic Law with a Human Rights Face* [hereinafter IEL with a Human Rights Face].

Hans Kelsen, 1995. Pure Theory of Law, translated by Somardi, Jakarta: Rimdi Press.

Jimly Asshiddiqie, 1998. National Law Development Agenda Globalization Ages, Jakarta: PT Balai Pustaka.

Lili Rasjidi and IB Wyasa Son, 2003. Law As A System, (Bandung: Mandar Maju).

Mochtar Kusumaatmadja, 2002. The concepts of Law in Development, Bandung: Alumni.

Nonet-Selznick, 2003. Repressive Law, Autonomous Law, and the LawResponsive. Jakarta: HuMa.

Satjipto Raharjo, 1998. Political science law, Legal Studies, (Bandung: Alumni).

Soerjono Soekanto, 1999. In the Legal Awareness Society, In, Association of Technical Manpower Training Materials Upgrading Designer Legislation, 1 s / d June 20, 1981, (Jakarta: BPHN).

Sisth UN Congress om the Prevention of Crime and Treatment of Offenders, 1981, (New York, Departement of International Economic and social Affairs, United Nations).

Sunaryati Hartono, 1992. On Ways of Establishment Law, In, Association of Technical Manpower Training Materials Upgrading Designer Legislation, 1 s / d June 20, 1981, (Jakarta: BPHN).

### **Legal Documents:**

Indonesia, GBHN Indonesia, Tap MPR RI Nomor IV/MPR/1999, Tahun 1999-2004.